

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Smith	Team: Squad #7	CCRB Case #: 201804217	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/28/2018 2:00 AM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 11/28/2019	EO SOL 11/28/2019	
Date/Time CV Reported Tue, 05/29/2018 6:08 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/29/2018 6:08 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Timothy Lerner	17382	958810	105 PCT
2. POM Frank Giunta	13768	960593	105 PCT
3. POM Todd Ello	24281	950375	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Cooper Kulich	07255	964595	105 PCT
2. POM Christopher Murphy	14500	964671	105 PCT
3. POM Jonathan Venetucci	10384	942663	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Timothy Lerner	Abuse: Police Officer Timothy Lerner threatened § 87(2)(b) with the use of force.	
B.POM Timothy Lerner	Abuse: Police Officer Timothy Lerner threatened § 87(2)(b) with the use of force.	
C.POM Frank Giunta	Abuse: Police Officer Frank Giunta threatened § 87(2)(b) with the use of force.	
D.POM Timothy Lerner	Abuse: Police Officer Timothy Lerner threatened to arrest § 87(2)(b)	
E.POM Frank Giunta	Abuse: Police Officer Frank Giunta threatened to arrest § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 29, 2018, § 87(2)(b) called the CCRB and filed this complaint via the CCRB's call processing system.

On May 28, 2018, at approximately 2:00 a.m., Police Officer Timothy Lerner, Police Officer Frank Giunta, Police Officer Todd Ello, Police Officer Cooper Kulich, Police Officer Christopher Murphy, and Police Officer Jonathan Venetucci responded to § 87(2)(b) in Queens after § 87(2)(b) called 911 reporting a dispute over her vehicle's pending repossession. PO Lerner allegedly threatened to remove § 87(2)(b) from § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). Both PO Lerner and PO Giunta allegedly threatened to remove § 87(2)(b) from her vehicle (**Allegation B and C: Abuse of Authority**, § 87(2)(g)). PO Lerner and PO Giunta threatened to arrest § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g)). No arrest or summons resulted from this incident.

§ 87(4-b), § 87(2)(g)

There is no video evidence in this case.

Findings and Recommendations

Allegation A - Abuse of Authority: Police Officer Timothy Lerner threatened § 87(2)(b) with the use of force.

Allegation B – Abuse of Authority: Police Officer Timothy Lerner threatened § 87(2)(b) with the use of force.

Allegation C – Abuse of Authority: Police Officer Frank Giunta threatened § 87(2)(b) with the use of force.

Allegation D - Abuse of Authority: Police Officer Timothy Lerner threatened to arrest § 87(2)(b)

Allegation E - Abuse of Authority: Police Officer Frank Giunta threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b) called 911 and reported that three men were trying to repossess her vehicle but were refusing to show her identification. It is undisputed that § 87(2)(b) was sitting in her vehicle with her § 87(2)(b)-old son, § 87(2)(b) when PO Lerner and PO Giunta arrived on scene. It is undisputed that no supervising officer responded to location during this incident.

§ 87(2)(b) (01 Board Review) acknowledged that after she learned that her vehicle was being repossessed, she entered her vehicle to prevent it from being towed. When PO Lerner and PO Giunta responded to § 87(2)(b)'s location, both officers approached § 87(2)(b)'s drivers-seat window. § 87(2)(b) told PO Lerner that she wanted to verify that the men were legitimately repossessing her vehicle. PO Lerner agreed to speak to the men. After speaking to the men, PO Lerner immediately told § 87(2)(b) "If you don't get out of the car by the time the next police car comes, I will drag you both out of the car." § 87(2)(b) asked PO Lerner why he was being rude. PO Lerner repeated, "Either way, your car is going. If you don't get out of the car before the next car comes, I will drag you both out of the car." § 87(2)(b) and § 87(2)(b) immediately exited § 87(2)(b)'s vehicle and went inside their house. § 87(2)(b) said that PO Lerner did not threaten to arrest her during this incident.

§ 87(2)(b) (02 Board Review) denied that PO Lerner told § 87(2)(b) that he would drag both § 87(2)(b) and § 87(2)(b) out of § 87(2)(b)'s vehicle. PO Lerner said

to § 87(2)(b) “If you don’t get out of the car, I will drag you out.” PO Lerner never threatened § 87(2)(b) with the use of force. After PO Lerner verified that § 87(2)(b) s car was being legally repossessed, PO Lerner immediately said to § 87(2)(b) “If you don’t get out of the car before another car pulls up, I will drag you out of the car. This can lead to arrest.”

PO Lerner (03 Board Review) acknowledged verifying that a legal repossession was underway at § 87(2)(b) s request. After PO Lerner learned that § 87(2)(b) s vehicle was being legally repossessed, PO Lerner acknowledged telling § 87(2)(b) that her vehicle was being legally repossessed, that she had to exit it, and that if she did not, there was a possibility she would be arrested, and PO Lerner would have to call his boss, and his boss would handle it however he wanted to handle it. § 87(2)(b) and § 87(2)(b) immediately exited their vehicle and went back into their house. When PO Lerner was asked what § 87(2)(b) would have been arrested for, PO Lerner said that would have been for his supervisor to decide. PO Lerner denied ever threatening § 87(2)(b) with the use of force.

PO Guinta (04 Board Review) said that he and PO Lerner ordered § 87(2)(b) to exit her vehicle upon arriving at the scene, but she refused to do so. Both PO Guinta and PO Lerner told § 87(2)(b) “Until we know all of the information, just so you know, it is a possibility that you can get arrested and you would be removed from the vehicle if you refuse to cooperate. That is why we encourage you to get out of the vehicle until we know what is going on.” After making that statement to § 87(2)(b) PO Venetucci immediately told PO Guinta and PO Lerner that § 87(2)(b) s vehicle was being legally repossessed. PO Guinta and PO Lerner subsequently relayed that information to § 87(2)(b) and she and § 87(2)(b) immediately exited her vehicle. When PO Guinta was asked what § 87(2)(b) could have been arrested for, PO Guinta said, “In our job sometimes it is a possibility and because she was so non-compliant, we were just stating that it was a possibility, so if you don’t explain to us what is going on, just know this is what is on the table, so you should cooperate.”

PO Venetucci (05 Board Review) and PO Ello (06 Board Review) denied witnessing the allegations.

NYPD Patrol Guide, Procedure 214-13 states that the role of a uniformed member of service when called to the scene of an eviction or other civil process situation is to preserve the peace and prevent the commission of a crime. If the subject of an eviction or other civil process refuses to allow entry or leave voluntarily, a member of service is to notify the desk officer and request response of a patrol supervisor, before any further action is taken (07 Board Review).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (11 Board Review).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (14 Board Review).
- PO Lerner has been a member-of-service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Guinta has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Ello has been a member-of-service for seven years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of September 12, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (12 Board Review).
- § 87(2)(b)
- According to the Office of the Court Administration (OCA), between May 8, 2012 and September 12, 2018, § 87(2)(b) has no history of convictions in New York City (15 Board Review).

Squad No.: 7

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date